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United States of America

In the

Supreme Court of the United States

OCTOBER TERM, 1943

No. 634

KENNETH M. KEEFE and WALLACE D. BRADFORD,
Petitioners and Appellants,

vs.

EARL L. CLARK, Drain Commissioner of Oakland County, Michigan, and
BOARD OF SUPERVISORS OF OAKLAND COUNTY,
Respondents and Appellees,
CITY OF ROYAL OAK, Intervenor

BRIEF FOR APPELLANTS

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BRIEF FOR APPELLANTS

REFERENCE TO OFFCIAL REPORT OF OPINION BELOW.

Opinion of the Supreme Court of Michigan is *Keefe et al., v. Clark, Drain Commissioner, et al.*, 306 Mich. 503, 11 N. W. (2) 476 (R. 41). The opinion of the Circuit Court of Oakland County (R. 27) was not officially reported.

CONCISE STATEMENT OF GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

The statute governing the question of jurisdiction is Sec. 344 Sub. a. Title 28 "Judicial Code and Judiciary of the United States" U. S. C. A.; Sec. 237 (a) Title 28 Judicial Code.

The judgment which this Court is asked to review was rendered by the highest court of the state in which a judgment in the case could be rendered. It is a final judgment notwithstanding the fact that the case was remanded (R. 47), for the remand was merely for the purpose of entering the judgment prescribed in the opinion. No question in the case remained undetermined. The fact that the judgment is in this form does not prevent acquisition of jurisdiction. *Board of Commissioners v. Lucas*, 93 U. S. 108, *Mower v. Fletcher*, 114 U. S. 127. *Rio Grande Western Ry. Co. v. Stringham*, 239 U. S. 44. Nor does the fact that the suit was instituted for a declaratory judgment affect the question of jurisdiction. *Nashville Cincinnati & St. Louis Ry. Co. v. Wallace*, 288 U. S. 249.

Appellants claim that error was committed by the lower Court in failing to hold that certain statutes as construed by it are repugnant to Article 1, Sec. 10, of the Constitution of the United States. These statutes are Acts 114 and 155 of Mich. Public Acts of 1937 which have since been clarified by certain amendments. They are more particularly set forth in the statement as to jurisdiction, p. 2 and the provisions construed by the lower court are set forth in its opinion (R. 43). In an appendix hereto, the provisions cited by the lower court, together with some additional portions appear.

The question is one which has often been presented to this and other courts, where the right to a levy of taxes to

pay municipal bonds is modified or curtailed by statutes enacted after the bonds have been issued. Appellants who are holders of bonds issued by a Michigan drain district, under legal provisions which entitle them to a full deficiency assessment which must necessarily be levied if the bonds are to be paid, are confronted with statutes passed ten years after the issuance of the bonds. These statutes, as construed by the lower court, permit the creation of widespread exemptions from deficiency assessments, and limit the amount which can be imposed upon property and parties not exempted, in such a way that only a small fraction of the amount due upon the bonds can be enforced. Thus, the classic case of impairment of obligations of a municipal contract by withdrawing taxing power is presented.

Appellees have moved to dismiss this appeal, and briefs have been filed upon the question. Appellees argue that appellants did not properly preserve the federal question in the lower courts, it being their claim that the impairment of contract obligations springs from Act 114, Mich. Public Acts of 1937, and not from Act 155 of that year, and that the lack of specific mention of Act 114 in the pleadings in the trial court is fatal to appellants' right to review. Appellants' argument against this position is fully stated in their brief opposing the motion to dismiss, but will be treated later as a separate point in this brief.

CONCISE STATEMENT OF THE CASE

On November 1, 1927, East Clawson Storm Sewer Drain District issued $300,000 par value of serial bonds. At the time this suit was filed, June 25, 1942 (R. 2) $223,000 par value of bonds were unpaid and in default as to both principal and interest. Appellants hold a substantial block

of these bonds, and they, with other holders, entered into an arrangement with the drain commissioner, who in Michigan is the governing officer of a drain district, for a refunding of the bonds, with extension of maturities and reduced rate of interest. While a refunding plan was being developed, a ruling by the Michigan Supreme Court in a case involving bonds issued by a village predicated upon special assessments (*Municipal Investors Assn. v. City of Birmingham,* 298 Mich. 314) caused doubt to the extent of properties in the district which would be subject to further assessments for the purpose of paying the refunding bonds (R. 10). The drain commissioner contended that the refunding plan as negotiated could not be carried out, if the ruling of the Birmingham case were applied. That case was then pending in this Court on appeal, and the parties believed that the decision of this Court would determine whether the kind of deficiency assessment necessary to support the bonds could be levied. This Court's opinion, however, was not determinative when considered with relation to these bonds. *Municipal Investors Ass'n. v. Birmingham,* 316 U. S. 153. The drain commissioner then refused to refund the bonds, and in fact denied that there was any obligation to levy any further assessments (R. 24).

Appellants therefore petitioned the Circuit Court of the County to determine whether the drain commissioner and the then Board of Supervisors were obliged to act under the provision of the drain law, in force when their bonds were issued, (and still unrepealed) and levy on all lands in the district not exempt by reason of public ownership, and upon the several municipalities assessed at large, a deficiency assessment sufficient to pay the bonds (R. 6). A subsidiary question presented was whether periodic supplemental assessments against such lands and municipalities

could be made in accordance with the refunding plan as authorized by Act 129, Mich. Public Acts of 1939. Appellants prayed for a determination that all privately owned lands in the district were subject to a deficiency levy and that in any event the amount of such levy must be sufficient to pay the bonds. Appellants in their petition stated their understanding of appellees' position to be that Act 155 Mich. Public Act 1937 and Acts *in pari materia* abrogated or curtailed the provisions which previously had required such assessment, but appellants asserted that if such interpretation were given to the later enacted statute, they were void as to these bondholders because of Art. 1, Sec. 10 of the Federal Constitution (R. 5).

In appellees' answer (R. 25) they asserted that a large portion of the lands originally assessed had reverted to the State for non-payment of taxes, and that the decision of the Michigan Supreme Court in the Birmingham case operated to prevent any further assessment.

At the hearing, it appeared that 65% of the land in the district had been delinquent and had passed to the State (Defendants' Exhibit 2, R. 56, admitted R. 39). Some had been sold by the state and was again privately owned. How much the record did not show (R. 40).

All relief was denied to bondholders by the trial Court (R. 33). The Court considered itself bound by the Birmingham case to hold that "Lands sold under Act 155 of Public Acts 1937, as amended, are not subject to a deficiency re-assessment. Under this holding 65% of the lands of the district are lost to the possibility of reassessment" (R. 31). The trial court's opinion makes no mention of Act 114, Michigan Public Act 1937. Appellants appealed from the judgment claiming that the trial court erred in denying the petition, and in his rulings that land which had been sold under Act 155 of Michigan Public Act

1937 were exempt from an additional deficiency assessment (R. 1).

The opinion of the Supreme Court of the State (R. 40) contains a fairly accurate statement of the facts and the contentions of the parties. It showed that appellants raised the question of whether any statute passed subsequent to the issuance of the bonds, which would deprive them of the right to a full deficiency assessment, could be valid under Art. 1, Sec. 10, of the Federal Constitution (R. 42). The opinion notes the provisions of the drain law requiring the deficiency assessment, the provisions which require that drain taxes be enforced as ordinary real estate taxes and the provision of Sec. 67, 1 Comp. Laws 1929, Sec. 3459, as last amended by Act No. 234, Public Acts, 1941, relating to the decree to be entered in connection with the order to sell lands for delinquent taxes. The provision as quoted was the addition to Sec. 3459, Compiled Laws 1929, Sec. 7.112 Mich. Stats. Ann., enacted in Act 114, Michigan Public Act 1937. It then proceeds to quote from Act 155 as to the effect of the quit claim deed. It disposes of appellants' argument on the proposition that the obligation of contracts has been impaired by saying that such impairment is justified by necessity (R. 45).

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED

All errors assigned (R. 52) are urged by appellants. These may be more replete than necessary, but were stated in the form so as to cover various aspects of the question. For the purpose of this brief, they may be condensed to the following:

The contract clause of the federal constitution (Article 1, Sec. 10) prohibits the enactment of laws which substantially remove tax resources for the payment of municipal bonds. Laws enacted subsequent to the issuance of such bonds, which, either by the creation of widespread tax exemption, or by the limitation of tax liability, prevent the creditor from realizing upon his contract, come within the prohibition. The lower court, while recognizing the impairment of the creditors' contract by subsequent legislation, erred in holding such impairment to be justified on the ground of expediency.

ARGUMENT

Summary of Points

1. This Court has jurisdiction.—Analysis of the lower court's opinion, we believe, shows that it considered Act 155, Michigan Public Act 1937, as the enactment which prevents full realization of rights guaranteed by the provisions of the drain law in respect to deficiency assessments. But if we misinterpret the opinion, it is of no consequence, so far as the question of this court's jurisdiction is concerned, for it is clear that the lower court considered that subsequently enacted statutes limited bondholders' rights, that appellants contended that such statutes operated to impair their contract rights, and that this was a violation of the contract clause of the federal constitution.

2. The obligation of contracts has in this case been impaired.—Were it not for legislative enactment passed long after these bonds were issued, all privately owned lands in the district and the municipalities taxed at large, would be subject to a deficiency assessment in an amount sufficient to pay the bonds.

3. State laws impairing contract obligations may not be justified on the ground of expediency.

1. THIS COURT HAS JURISDICTION

The only proposition that is urged by appellees against the court's jurisdiction is the claim that the impairment of contract results from Act 114, Michigan Public Acts, 1937, and not Act 155 of the same year. We think the Michigan Supreme Court ascribes to the latter act the change in legislation which sustains the defense, and it is

logical that it should, once it has arrived at the conclusion that the possibility of a reassessment for deficiencies constitutes an incumbrance.

Appellants have never contended that land whose title has absolutely vested in the state is subject to a tax while the State owns it. We recognize that state property is exempt, and that taxes for any purpose can only be levied upon lands which are privately owned. Our contention throughout the litigation has been that when the state conveys the land to either the former owner or another it then becomes subject to any tax which the legislature has provided should be levied; and that if the laws were such when the bonds were issued, temporary ownership by the state confers no permanent exempt status, and a subsequent change in those laws is invalid as against creditors who seek to have such taxes enforced. All that we ask is that a holder of a drain district bond should have the same right as the holder of a bond of any other municipality. No one contends that temporary ownership by the state through the operation of tax laws discharges a parcel of land within a school district, a city or township, from liability for taxation to meet municipal obligations previously incurred. Apparently, under the court's ruling, it is only with respect to drain district bonds that this happens. It can only happen because some law relating to the transfer of title out of the state, either directly or by judicial interpretation, confers the exemption.

But if we have misinterpreted the lower court's opinion, and if our logic is faulty in regard to Act 155 being the legislation which confers the exemption, it can make no difference. The lower court has certainly held that some law passed in 1937 confers the exemption and deprives bondholders of rights which they were promised when they

bought the bonds. It has recognized that a constitutional question has been raised, and it has decided such question adverse to the federal claim submitted by appellants. No clearer answer can be given to the appellees' contention than the language of this court in *State of Montana v. Rice*, 204 U. S. 291, 299, reading as follows:

> "Where it clearly and unmistakably appears from the opinion of the State Court under review that a federal question was assumed by the highest court of the State to be in issue, was actually decided against the federal claim and the decision was essential to the judgment rendered, it is sufficient to give this court authority to re-examine the question on writ of error."

Other decisions of like effect are cited pp. 9 and 10 of our brief opposing the motion to dismiss.

It must be remembered that the federal claim in this case arises as a rebuttal to a defense, and hence came into the argument when the case was before the state supreme court.

Appellants' petition asked that the laws existing when their bonds were issued be enforced. Appellees contended that such laws had been changed, so that appellant no longer had the right which they sought to have enforced. Appellants then countered with the claim that the change was repugnant to the Federal Constitution.

Under these circumstances, it is immaterial to consider anything other than the lower court's opinion.

> *San Jose L. & W. Co. v. San Jose Ranch Co.*, 189 U. S. 177.

A refusal of this court to take jurisdiction would be tantamount to saying that a litigant must, when he starts this suit, anticipate the view of the court of last resort, and

so shape his pleadings, proceedings and exceptions that the record throughout must present the precise federal question which was ultimately decided. Such a requirement would prevent this court from serving the function assigned to it by Congress as the protector of rights guaranteed by the Federal Constitution against erroneous judgments by state courts.

2. THE OBLIGATION OF APPELLANTS' CONTRACTS IS IMPAIRED.

Nothing is better settled in the law relating to public securities than the proposition that the statute authorizing a bond issue enters into and forms a part of the contract. No one would buy a public security without assurance contained in the law of the sources of revenues to be devoted to its payment. The plan provided for raising the funds is as much a part of the promise as the undertaking to repay the sum borrowed.

The statutes under which these bonds were issued, recited in the bonds (R. 7, 8) show that drain districts are organized for the purpose of building and maintaining drainage improvements. In the course of proceedings the cost of the proposed project is determined, and the proportion which each parcel of land and each municipality to be taxed at large shall be assessed. An assessment roll is prepared and confirmed, in which the assessment against each is designated. Upon confirmation of the roll the assessments become liens declared to be perpetual until they are paid, with all lawful interest, costs and charges. (Section 5, Ch. X, Act 316 Mich. Public Acts 1923, Section 4923 Mich. C. L. 1929.) The drain commissioner who conducts the proceedings may determine that the assessments may be divided into annual installments, to be collected with interest from date of the original assessment. The

taxpayer may, if he so desires, pay the entire assessment, or may pay in installments. (Section 4939 Mich. C. L. 1929.) The installments are placed on the annual tax rolls and collected as ordinary real estate taxes, and if not paid become delinquent and subject to the same proceedings for enforcement as such taxes.

Bonds may be issued in the name of the district in anticipation of the collection of installments, (Section 4937 Mich. C. L. 1929) and in such bonds the commissioner, in behalf of the district, is directed to pledge the full faith and credit of the district, the lands included, and the municipalities taxed at large.

If all assessments are paid on the installment basis promptly as the installments fall due, the bonds will be liquidated, for the interest on the installments pays the interest on the bonds. But if a number of taxpayers pay in full, or if some taxes cannot be collected, there will be a deficiency and the law has always provided substantially as set forth in Section 4940, Mich. C. L. 1929, quoted in the opinion (R. 42), that an additional deficiency assessment shall be levied. By reference back to a prior section (4917), it appears that this must be levied on the same percentage basis, and without any further hearing or review. If as a result of this assessment a surplus is collected, it is credited to the drain fund and used for maintenance.

By an amendment to Section 4940, enacted in Act 129, Michigan Public Acts 1939, a provision was added which permitted the levy of the deficiency in periodic amounts, as determined to be necessary, in case bonds were refunded. The refunding plan proposed and accepted provided for such periodic assessments of the deficiency. (Section 11, Drain Commissioner's Order, R. 17.) Thus there is a plain duty imposed upon the commissioner to levy an addi-

tional assessment when there is a deficiency and the bonds are all due, and if he can get bondholders to agree to a refunding he may provide for such levy periodically as needed. In this case the bondholders are willing to accept refunding bonds, and the periodic deficiency levies provided in the plan, but insist that if respondents are unwilling to carry it out, the bondholders are entitled to the single deficiency assessment as required in Section 4940, re-enacted in Act 129, Michigan Public Acts 1939.

There is no question in this case as to the meaning of Section 4940, or the existence of the conditions calling for its application. The lower court recognizes that it requires a deficiency assessment against lands which have not gone through the scavenger sale, and against municipalities taxed at large, and for this reason modified the judgment of the Circuit Court. In a prior decision, *Regents v. Pray*, 264 Mich. 693, the court recognized the duty of the commissioner to levy such additional assessment. Appellants in this case cannot be confronted with the proposition on which the Birmingham case was decided in this court. The contract existed and the only question is whether it has been impaired. Appellees and the lower court concede that if it were not for legislation enacted in 1937, the petition would have been sustained.

We know that this court takes a practical view of cases of this kind and desires to know whether substantial rights, or merely theories, are involved. *Faitoute Iron & Steel Co. v. City of Asbury Park*, 316 U. S. 502. It may, therefore, be desirous of knowing how different is the situation of appellants and other bondholders than that which would have existed had there been no 1937 legislation. The question may be asked, "Was it possible under the law as it existed when these bonds were issued for privately owned lands in the district to be exempt from

deficiency levies?" To answer this question we refer to the appendix of this brief, in which we have set forth in as much detail as is pertinent the statutes relating to tax enforcement procedure as they existed when the bonds were issued. A parcel of land on which the owner neglected or refused to pay taxes, which could not be sold for taxes, might after a period of five years be taken over by the state as abandoned land, but when the state conveyed it, it would again be subject to any taxes which might be levied against it. (See Sections 7.181, 7.182 and 7.185 Appendix.) While in the hands of the state it would be exempt, and all prior liens and encumbrances cancelled, but as soon as it passed again into private ownership new taxes for any lawful purpose could be levied against it. The only taxes cancelled against it were those charged against it on the books of the Auditor General, and as the only taxes which could be so charged were those which had been previously levied and returned delinquent there could be no exemption from future levies.

If only the language of the statutes is considered, the changes which occurred in 1937 do not appear very serious so far as bondholders are concerned. It is only by judicial interpretation that they take on this aspect. By virtue of interpretation, based rather upon a consideration of the presumed policy of the legislature than any language used, the 1937 legislation is deemed the equivalent of an express prohibition against the levy of any deficiency drain assessment against a parcel of land in a drain district which has gone through the scavenger sale. The court in this case, and in the prior Birmingham decision, interprets the word "encumbrance" used in the quit claim deed provision of Act 155 and the decree provision of Act 114, as broad enough to include a potential liability to a tax which never has been imposed. The fact that there is a

drain district debt, the possibility of a deficiency, and the obligation on the part of the commissioner some time in the future to levy an additional tax, is regarded as an encumbrance. Hence it is said, when the legislature said that all encumbrances should be cancelled it was destroying the possibility of a further assessment and creating an exempt status for these lands against any further tax which might be imposed to meet the prior existing debt.

Although we contended below that such a construction of the term "encumbrance" was erroneous, citing prior Michigan decisions, *Harriman v. Hilliard*, 27 Mich. 271, *White v. Gibson*, 146 Mich. 547, *Jacobs v. Union Trust Co.*, 155 Mich. 233, and *Mullen Benevolent Corp. v. U. S.*, 290 U. S. 89, we were overruled.

We seriously doubt whether the members of the legislature or the governor who approved this legislation could have anticipated this broad construction of the term "encumbrance." Until the Birmingham case was decided it was not the view of opposing counsel, for in a brief filed in the Supreme Court of the State in *Baker v. State Land Office Board*, 294 Mich. 587, he argued that there was no impairment of contract. On page 7 of his brief he said:

> "How are the bondholders injured? Such districts are liable for a deficiency spread of taxes and the rehabilitation of the properties sold at scavenger sale makes them liable for this deficiency spread * * *. The lien on particular property in the district has been foreclosed and liquidated at less than its face value, but if and when a deficiency is incurred as a result of such foreclosure and liquidation, such property is subject to deficiency assessments. It is the intent of the law that all property in the district reach its way into private hands as quickly as it may be sold. Only temporarily, if at all, is any property removed from the possibility of deficiency assessments."

The foregoing observations as to the unexpected construction of the term "encumbrances" we recognize are explanatory rather than argumentative. We believe it of some importance to note that a deliberate intent to impair contract obligations is not manifest, and that it is only by reason of judicial interpretation that the statutes under consideration have this effect.

Another practical question may be raised as a result of some of the observations of the lower court, particularly the statement, "We cannot, therefore, say that the bondholders' contract has been impaired when they received the maximum benefit under the circumstances." This requires some discussion: These observations have no support in any allegations or proofs in the record. The court merely assume that such amounts as may ultimately come into the treasury of the district as a result of a scavenger sale are the maximum that could ever be realized from lands on which there had been a refusal or neglect to pay taxes. The provisions in regard to a scavenger sale contained in the State Land Office Board Act, Act 155 Michigan Public Acts 1937, (see appendix) permits a sale at a price equal to 25% of the assessed valuation at the time of the vesting of title in the state. As lands delinquent for drain taxes are usually delinquent for general taxes, and often the accumulated delinquencies far exceed assessed valuations, (*Baker v. State Land Office Board*, 294 Mich. 587) the amount for which the land is sold may be far less than the accumulated taxes. Whatever is received, less some expense deductions, is apportioned among the taxing units in proportion to the tax liens that have been cancelled. Inasmuch as no deficiency assessment has ever been levied, and therefore no lien has been created, the drain district receives no percentage of the proceeds of the scavenger sale to apply against a

future deficiency assessment. In fact, there would be no way to compute such percentage without knowing how much of a deficiency assessment would in the future be levied. To illustrate, we may suppose that a parcel of land has an assessed valuation of $1000.00. The accumulated tax liens amount to $800.00, half of which are the unpaid drain assessment for past delinquency. The land can be sold for $250.00. The deductions amount to $10.00, leaving $240.00 to be distributed to the taxing units. The drain district gets a little less than one-half of the sale price, and the remainder is distributed to the other taxing units, *e.g.*, the state, county, township and school district. It loses slightly more than $275.00.

We may assume that the bid of $250.00 reflects the market value of the land at the time it is sold, and that it is desirable to get the land into the hands of someone who will develop it and who will pay taxes on it in the future, We may also assume that $250.00 will more readily be bid if there is an assurance that the land will be exempt from some future taxes. The law as interpreted is oppressive against holders of bonds of a drain district, because they are singled out to bear the burden in order to get the lands back on the tax rolls. The county, township and school district also have bonded indebtednesses which must be paid from future debt service levies. The land which has been sold for $250.00 is again placed on the tax rolls, and subject to such taxes as these units may levy. They must each year levy some taxes upon this land to provide debt service. Such future levies are not cancelled by anything that has happened as a result of the operation of the legislation of 1937.

Holders of municipal bonds do not take them with any idea that at some time while they are unpaid the property subject to taxation may be freed from future liability by

paying some amount which can be determined from an auction sale. There must in the nature of things be periods of depression when land values are depressed far below real worth. This fact is recognized in *Home Building and Loan Ass'n. v. Blaisdell,* 290 U. S. 398, as the justification for the mortgage moratorium law there considered. A bondholder has the right to look to future improvement and development, just as a private creditor has a right to look to future earnings and prosperity of his debtor.

That the legislation, under the lower court's interpretation, works to the serious disadvantage of bondholders, is apparent in the comment of the district's refunding agent, Mr. Carey, (Ex. 2 to Petition, R. 10) in the letter to bondholders proposing the acceptance of the refunding plan. A radical alteration of the plan will be necessary if resources from lands which have passed through the scavenger sale are lost to the district. If the right to additional assessments against such lands is sustained, then the plan to refund the bonds par for par, and the issuance of certificates of indebtedness to refund unpaid interest, is deemed "a matter of sound municipal financing." (Order of Drain Commissioner, R. 13.) With 65% of the district exempt from deficiency assessments, and the remainder limited to the amount which would be levied if there were no exemptions, the bondholders are forced to absorb the loss occasioned by such exemption. But if there is no such exemption there is every reason to suppose that the debt can be discharged in due time. This district lies in a well developed section of the state, within a short distance of the City of Detroit, and will not revert to wilderness. The debt of $300,000.00 created in 1927 was not thought too excessive to be paid off in ten years, and while the intervening depression showed this to be a mis-

calculation, it can be met without difficulty if sufficient time is given.

Another effect of the decision on the exemption question which adds to the bondholders' loss is that it prevents them from securing payment from the remaining lands and the governmental units assessed at large. Whether they would be able to pay the debt if the whole burden should be imposed upon them cannot be known, but by reason of the lower court's opinion on the main point these tax resources are seriously depleted. The lower court held that, if the entire amount were imposed upon these lands and municipalities, it would violate the uniformity clause of the Constitution (R. 46), meaning, no doubt, the State Constitution. As this is not a federal question, it is not reviewable here, although we fail to see the connection between the liability of these lands and municipalities and such uniformity clause.

The net result of the decision is that bondholders at best can receive but a small portion of the amount due on their bonds, unless perchance they are able to enforce payment out of the county's general fund. This is an uncertain resource, as bondholders' chance of recovery is dependent upon finding sufficient in the general fund at a time when the advancement will not cause the county to exceed the debt limit. *Regents v. Pray,* 264 Mich. 693. The county is not an unqualified guarantor of payment, and it can defeat recovery from it by keeping its general fund depleted.

Having established the fact that the legislation of 1937, as construed by the lower court, works substantial injury to appellants, we will consider the applicable legal principles. *Von Hoffman v. City of Quincy,* 4 Wall. 535, expresses the principles that have always been followed by this court. At the time of the issuance of bonds there

under consideration there was no legal limit upon the taxes which the city could impose. Subsequent legislation imposed a limit at an amount barely sufficient to provide operating expenses, leaving no amount which could be levied for debt service. The court said:

> "It is also settled that the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. This principle embraces alike those which effect its validity, construction, discharge and enforcement. * * * Nothing can be more material to the obligation than the means of enforcement. Without the remedy the contract may, indeed, in the sense of the law, be said not to exist, and its obligation to fall within the class of those moral and social duties which depend for their fulfillment wholly upon the will of the individual. The ideas of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion. The obligation of a contract 'is the law which binds the parties to perform their agreement.' The prohibition has no reference to the degree of impairment. The largest and least are alike forbidden. * * * No attempt has been made to fix definitely the line between alterations of the remedy, which are deemed legitimate, and those which, under the form of modifying the remedy, impair substantial rights. Every case must be determined upon its own circumstances. Whenever the result mentioned is produced the act is within the prohibition of the Constitution, and to that extent void.
>
> "The obligation of the contract, in the constitutional sense, is the means provided by law by which it can be enforced,—by which the parties can be obliged to perform it. Whatever legislation lessens the efficacy of these means impairs the obligation. If it tends to postpone or retard the enforcement of

> the contract, the obligation of the latter is to that extent weakened. * * * When a state has authorized a municipal corporation to contract, and to exercise the power of local taxation to the extent necessary to meet its engagements, the power thus given cannot be withdrawn until the contract is satisfied. The state and the corporation, in such cases, are equally bound."

In *Seibert v. Lewis,* 122 U. S. 284, the question before this court was whether a judgment creditor of a municipality was entitled to have enforced laws relating to the collection of taxes existing when the debt was incurred, or laws which subsequently were enacted and which the court found were less efficacious in producing the funds necessary to pay the judgment.

The court concluded its opinion thus:

> "For the reasons which we have pointed out, we are unable to concur in the judgment of the Supreme Court of Missouri, and are constrained to hold that the section of the Revised Statutes in question impairs the obligations of the contract with the relator under the act of March 23, 1868, and as to him are, therefore, null and void by force of the Constitution of the United States; and that the laws of Missouri for the collection of the tax necessary to pay the judgment, in force at the time when it was rendered, continue to be and are still in force for that purpose. They are the laws of the state which are applicable to this case. When he seeks and obtains the writ of mandamus from the Circuit Court of the United States, for the purpose of levying tax for the payment of the judgment which it has rendered in his favor, he asks and obtains only the enforcement of the laws of Missouri under which his rights became vested, and which are preserved for his benefit by the Constitution of the United States. The question, therefore, is not whether a

tax shall be levied in Missouri without the authority of its law, but which of the several of its laws are in force and govern the case."

In *Louisiana v. Pillsbury*, 105 U. S. 278, is the following:

> "Legislation of a state thus impairing the obligation of contracts made under its authority is null and void, and the courts in enforcing the contracts will pursue the same course, and apply the same remedies, as though such invalid legislation had never existed."

In *W. B. Worthen Co. v. Kavanaugh*, 295 U. S. 56, the last case decided by this court on this question, a much less serious case of impairment than the present case was presented. The most that could be said of the legislation in question was that it retarded and delayed creditors, without clearly voiding any part of the debt. The court said:

> "Under the statutes in force at the making of the contract, the property owner was spurred by every motive of self interest to pay his assessments if he could, and to pay them without delay. Under the present statutes he has every incentive to refuse to pay a dollar, either for interest or for principal. * * * Relief is not conditioned upon payment of interest and taxes or the rental value of the premises. The case is one of postponement for a term of years, with undisturbed possession for the debtor and without a dollar for the creditor. There is not even a requirement that the debtor satisfy the court of his inability to pay."

Recognizing that a state may regulate remedies, the court nevertheless pointed to a distinction, saying:

> "A different situation is presented when extensions are so piled up as to make the remedy a shadow. * * * What controls our judgment at

> such times is the underlying reality, rather than the form of the label. The changes of remedy now challenged as invalid are to be viewed in combination with the cumulative significance that each imparts to all. So viewed, they are seen to be an oppressive and unecessary destruction of nearly all the incidents that give attractiveness and value to collateral security."

This decision contains citations of all prior decisions on the subject. Space will not permit a detailed consideration of each, but we believe the court will find them fully sustaining the proposition which we assert.

Following the lead of this court lower federal courts and the state courts have on most occasions been diligent in striking down legislation which prevented the enforcement of municipal debts through changes in taxing statutes.

The Michigan Supreme Court in prior opinions has several times adhered to the views expressed by this court. In *Board of Education of Lincoln Park v. Board of Education of City of Detroit,* 245 Mich. 411, it held unconstitutional a statute which detached a portion of a school district and added it to another district, making the former district responsible for the bonded indebtedness. A little analysis will demonstrate the similarity between that situation and the one presented here. By exempting certain lands from debt service taxes in this district, they are effectually detached so far as the corporate obligations are involved, although they still enjoy the benefits produced by the drainage improvement.

In *Thompson v. Auditor General,* 261 Mich. 624, the court reviewed the underlying reasons which caused the framers of the constitution to incorporate the contract clause. It said:

"Any legislation which renders the remedy of the stockholders less effective or less convenient, or which changes their remedy or takes it away, impairs the obligation of their contract, unless a remedy substantially as efficacious remains. It is not a question of the degree of the impairment; the least is as much prohibited as the greatest."

Florida decisions growing out of the adoption of a constitutional amendment exempting homesteads up to $5000 from taxes contain a voluminous discussion of the right of a state to exempt property from taxes needed to pay public debts. The court held that even a constitutional amendment could not create exemptions from such taxes, and that the amendment was valid only to the extent that it exempted such homesteads from operation levies and debt service levies for new bond issues.

Gray v. Moss, 115 Fla. 701, 156 So. 262;
State ex rel. Long v. Carey, 121 Fla. 515, 164 So. 199;
Boatright v. City of Jacksonville, 117 Fla. 477, 158 So. 42;
Folks v. Marion County, 121 Fla. 17, 163 So. 298;
State v. Port of West Palm Beach, 121 Fla. 746, 164 So. 851;
State v. Boring, 121 Fla. 781, 164 So. 859;
State v. City of Daytona Beach, 118 Fla. 773, 160 So. 501;
Fleming v. Turner, 122 Fla. 200, 165 So. 353;
Long v. St. John, 126 Fla. 1, 170 So. 317, 109 A. L. R. 522;
Groves v. Board of Education, 109 F. (2) 522.

In some of these cases the court considered the contention that a state may always provide exemptions, and the creditor takes his chance of having the security of his obligations frittered away by this means. The court considered two decisions of this court advanced in support of this doctrine, *Gilman v. Sheboygan*, 2 Black (U. S.) 510, 17 L. Ed. 305, and *Arkansas S. R. Co. v. Louisiana & A. R. Co.*, 218 U. S. 431, but distinguished them. Although this court did in those cases permit after enacted legislation creating exemptions to stand, it is clear that the decisions were limited to the peculiar facts in each case. In *Gilman v. Sheboygan* the law had been changed to limit the tax resources to real property alone. A property owner claimed that this deprived him of constitutional rights. Although he argued that bondholders were injured by this subsequent legislation, the court refused to consider the point since bondholders were not before the court. In the other case a parish had been authorized to vote a tax of 5 mills per dollar for a period of ten years on all its taxable property, to be paid to a railroad company. A subsequently enacted statute exempted from parish taxes the property of another railroad company. The court said:

> "An authority given by the state to promise and levy a tax in future years on the taxable property in the parish does not purport to limit the powers of the state to say what property shall be taxable when the times comes * * * at least by general regulations not aimed at aiding an evasion of the promise it has allowed."

The last qualifying clause is significant. It also is important to note that the parish had made no promise of a specific sum. It merely agreed to levy five mills per dollar and turn the amount received over to the company for a term of ten years.

The Florida decisions we believe contain the rule applicable here, *i. e.*, that, after municipal debts predicated upon the exertion of local taxing power are created, the taxing power cannot be so reduced as to prevent the payment of such debts. Legislation having such effect is void as to creditors under the contract clause of the constitution.

3. STATE LAWS IMPAIRING CONTRACT OBLIGATIONS MAY NOT BE JUSTIFIED ON THE GROUNDS OF EXPEDIENCY.

The decision of the lower court with its reference to the Birmingham case, and *Baker v. State Land Office Board*, 294 Mich. 587, in plain language sustains the proposition that a state legislature in the interest of the public may cancel debts.

We grant that a serious situation existed as a result of the depression, and that the state was not prevented by the Federal Constitution from changing tax enforcement laws so as to accelerate the date upon which a delinquent taxpayer would lose his property, and that the state, after its acquisition, could sell the property at the price it deemed advisable. Our objection is aimed at the creation of a tax exemption in connection with such sale, and through such exemption the destruction of prior contracts.

The legislation, as pointed out before, construed as it is by the lower court, single out only one type of public debt for destruction, but if this may be done constitutionally there is no limit to the extent to which it may be carried. If the lower court is sustained, there is no constitutional bar to saying that any property which has gone through a scavenger sale shall be exempt from debt service levies for any pre-existing municipal debt. All the property owners of a city, by the simple expedient of refusing to

pay their taxes and letting their property go to a scavenger sale, can free all of the property from the duty of contributing to the discharge of debts, and leave the creditors with worthless securities.

The genesis of the contract clause of the Federal Constitution is ably related by Mr. Justice Sutherland in his dissenting opinion in *Home Building and Loan Ass'n. v. Blaisdell,* 290 U. S. 398, and while the majority of the court disagreed with his ultimate conclusion, it did not criticize his analysis of the reasons which led to the incorporation of that clause in the organic law.

Intolerable conditions, stifling trade and commerce and promoting disunity, existed in the thirteen original states because of the passage of laws impairing contract rights. Recognition of the possible necessity of some governmental action to permit such impairment was given by the power conferred upon Congress to enact bankruptcy laws. A clear intent was manifested that this power might with greater safety be entrusted to the national government.

Congress permits taxing districts such as this to adjust their debts through bankruptcy proceedings. They are thus not without a source of relief, where the conditions warrant. There is thus no evidence of compelling necessity in the public interest, justifying the statutes in question as they have been construed. The absence of such public necessity is quite apparent when the discrimination against this type of public creditor is considered, for as noted above, no attempt is made to relieve lands which have gone through scravenger sales from future debt service levies on account of bonds previously issued by other municipalities.

The lower court's position can only be explained by what seems to us to be an erroneous conception of this

court's decision in the Blaisdell case. It failed to note the limitations on the doctrine of that case which this court carefully embodied in its opinion, and which it has since reiterated in *W. B. Worthen Co. v. Thomas,* 292 U. S. 426, and *Worthen v. Kavanaugh (supra).* In speaking of the reserved power of the states upon which the decision in the Blaisdell case was planted, this court, in *Worthen Co. v. Thomas,* said that "it must be construed in harmony with the fair intent of the constitutional limitation, and that this principle precluded a construction which would permit a state to adopt as its policy the repudiation of debts, or the destruction of contracts, or the denial of the means to enforce them. We held that when the exercise of the reserved power of the state, in order to meet public need because of pressing public disaster, relates to the enforcement of existing contracts, that action must be limited by reasonable conditions appropriate to the emergency * * *." The court noted that in placing insurance money "beyond the reach of existing creditors, the Act contains no limitations as to time, amount, circumstances or need."

The recent decision of *Faitoute Iron and Steel Co. v. Asbury Park,* 316 U. S. 502, is in harmony with the two Worthen cases, for the statute there involved carefully safeguarded creditor rights and was as much intended for their benefit as for the benefit of debt burdened municipalities.

We, therefore, believe it apparent that the Michigan Supreme Court has misinterpreted the Blaisdell case, as the Supreme Court of Arkansas misinterpreted it when *Worthen v. Kavanaugh (supra)* was before it.

CONCLUSION

We respectfully submit that the lower court erred in overruling appellants' contention that Acts 114 and 155, Michigan Public Acts 1937, as amended, either severally or in combination, as construed by the lower court, violate Article I, Section 10 of the Federal Constitution, and as to appellants are invalid. They do not, in our opinion, afford justification for the position taken by the lower court. We, therefore, ask that the judgment be reversed and that the case be remanded for correction.

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APPENDIX

Portions of Michigan General Tax Laws Relating to Enforcement of Delinquent Taxes on Real Property

The most convenient compilation of Michigan Statutes relating to enforcement of delinquent taxes on real property is Michigan Statutes Annotated, Vol. 6, with its cumulative supplement for 1943. The references herein are to that compilation unless otherwise indicated. Before each quotation is the Section of Title 7, and after each quotation is the page in Vol. 6 on which it is found. Cumulative supplement will be indicated by "C. S."

Portions of the statutes as they existed in 1927 when the bonds in question were issued will first be given.

7.1 "That all property, real and personal, within the jurisdiction of the state not expressly exempted shall be subject to taxation." (7)

7.7 "The following real property shall be exempt from taxation:

Federal. First, all public property belonging to the United States;

State. Second. All public property belonging to the State of Michigan, except licensed homestead lands held under certificates, and lands purchased at tax sales and still held by the state.

Public Buildings. Third. Lands owned by any county, township, city, village or school district and buildings thereon used for public purposes." (18)

Several other classifications are exempt, such as lands held for churches, charitable, education or scientific insti-

tutions. While these are exempt from general taxes, they are subject to benefit assessments. *In re Auditor General's Petition*, 300 Mich. 80.

No substantial express amendments to the exemption laws, in so far as the questions involved here are concerned, have been made since 1927.

Enforcement of delinquent taxes through tax sales may result in the lands being sold to a person who bids the amount of the delinquent taxes, or to the State, in which case no money is paid by the state. We are only concerned with the question of lands bid in by the state, for otherwise money is obtained equivalent to the amount assessed. We can best consider this by tracing what becomes of a parcel of land upon which the owner fails to pay taxes, and which is bid in by the state. In 1927 and prior years, the procedure was as follows:

> 7.99 "If the township treasurer or other collecting officer shall be unable to collect any of the taxes in his roll, assessed on real property, he shall make a duplicate statement of the same. * * *" (192)
>
> 7.101 "When any county treasurer shall receive from a township treasurer a statement of unpaid taxes together with a list of the lands on which same are delinquent * * * such county treasurer shall enter the same at length on the books in his office, * * * and he shall make a transcript of all the descriptions of land returned as delinquent for unpaid taxes * * *. Such transcript * * * shall be forwarded to the auditor general * * *." (197)
>
> 7.104 "All lands which have been or may be returned to the auditor general as delinquent * * * shall be subject to disposition, sale and redemption for the enforcement and collection of such tax liens in the method and manner as hereinafter provided. In the disposition and sale of such delinquent tax lands the people of the State of Michigan shall be

deemed to have a valid lien upon such lands, with all the rights to enforce same as a preferred or first claim upon such lands, and the rights and choses to enforce such lien shall be held and construed by all the Courts of this State as the *prima facie* right of the state, and shall not be set aside or annulled except in the manner and for the causes herein specified.". (205)

7.105 "In sufficient time before the time fixed herein for the annual tax sale, the auditor general shall prepare and file in the office of the county clerk in each county in which lands are to be sold under the provision of this act a petition addressed to the Circuit Court for said county in chancery, stating therein by apt reference to lists or schedules annexed thereto a description of all lands in such county upon which taxes have remained unpaid for more than one (1) year after they were returned as delinquent" (with interest, penalties,—collection fees) "such petition shall pray a decree in favor of the State of Michigan against said land for the several amounts so specified therein, and on default thereof, that such lands be sold. * * *" (207) Subsequent provisions provide for notice, publication, hearing.

7.111 "* * * At least ten (10) days prior to the time fixed for the sale of such lands, the court shall make a final decree in favor of the State of Michigan for such taxes, interest and charges as shall be valid, and determine the total amount thereof chargeable against each parcel of land, and shall order a decree that such several parcels of land or so much of each as may be necessary to satisfy the amounts fixed by such decree, shall be sold as the law directs." (221)

7.112 "Such final decree * * * shall be substantially in the following form." (Recitals.) "It is ordered, adjudged and decreed that the amount of taxes, interest, collection fee and charges set down in the column headed 'Amounts decreed

against lands' in the Tax Record of which said petition forms a part, are valid and decree is made in favor of the State of Michigan, therefor against each parcel of said land for the amount set down in said column opposite to such parcel. It is further ordered * * * that said several parcels of land or such interests therein as may be necessary to satisfy the amounts herein decreed against same, shall be severally sold as the law directs on" (date specified). (233)

7.115 (Directions as to conduct of sale) * * * "If any parcel of land cannot be sold for taxes, interest and charges, such parcel may be passed over for the time being and shall on the succeeding day, or before the close of resale be reoffered; and if on such second (2nd) offer, or during such sale, the same cannot be sold for the amount aforesaid, the county treasurer shall bid off the same in the name of the state for the state, county and township in proportion to the taxes, interest and charges due each. And in such case, the taxes assessed on the lands so bid off to the state, and the interest and charges thereon, shall remain a lien upon said lands and any person or persons may thereafter purchase such lands of the state, as state tax lands or otherwise as provided in this act. * * * All lands bid off in the name of the state shall continue liable to be taxed in the same manner as if they were not the property of the state, except as hereinafter provided. * * *" (241)

7.132 "All lands heretofore or that may be hereafter bid off to the state for taxes which have not been redeemed or otherwise disposed of shall be offered for sale by the county treasurer at the regular annual tax sale provided to be held under the provisions of this Act. * * *" (289) (This section was repealed. Mich. Public Acts 1937, No. 325.)

7.139 "Neither the sale of state tax lands, nor the sale of any of the bids of the state for which

the time of redemption has not expired, shall in anywise prejudice the right to enforce the collection of any tax subsequent to the year or years for which the same has been sold as aforesaid, and for the taxes and charges remaining unpaid for said subsequent year, or years, the auditor general shall cause such lands to be offered in regular succession at the next annual sale for taxes, giving notice as required by law, unless previously redeemed or otherwise discharged." (299)

7.181. "Lands delinquent for taxes for any five (5) years, where said lands have been sold and bid off to the state for the taxes of one (1) or more of the said years, and then so held and no application having been made to pay, purchase or redeem the said lands for said taxes, and no action pending to set aside such taxes or to remove the cloud occasioned thereby, shall within the meaning of this act be deemed abandoned lands, unless such lands are actually occupied by the person having the record title thereto. Any lands delinquent for taxes for a period of five (5) or more years, and said lands having been sold and bid in by the State and held by the state for the taxes of any of said years, and no application having been made to pay, redeem or purchase the same, and no suit tending to set aside said taxes or remove the cloud from the title occasioned thereby, shall be subject to the provisions of this section. Whenever it shall appear by the records in the auditor general's office that any lands are delinquent for taxes for five (5) years or more and that said lands have been bid off to the State one (1) or more times by reason of such delinquent taxes, and the time of redemption of such sale or sales has expired and no application has been made to pay, to redeem or purchase the same and it shall appear that no action is pending in the Circuit Court of the county where said lands are situated to set aside the taxes or remove the cloud on the title occasioned thereby, the title to the state shall be deemed absolute in and to said lands * * *

Within ninety (90) days after such determination the auditor general shall make a transfer by deed of all lands so determined by the auditor general and said director of conservation to come within the provisions of this section to * * * the state of Michigan as to an individual as provided in section seventy-two (72) of this act, so far as said section is applicable, and such lands may be withdrawn from sale pending the execution of said deed." (358, 359)

(Note: The reference to section seventy-two (72) relates to the form of deed given to the holder of a certificate of sale.)

7.182 "When a description of land is delinquent for taxes for any five (5) years, and said lands have been sold and bid off to the state for taxes of one (1) or more of said years and then so held and is otherwise subject to transfer by deed to the Public Domain Commission as provided by the preceding section, and said land or any part of the same is also held as state tax land or as state bid for taxes of one (1) or more years, with other descriptions of land that are not delinquent for taxes of five (5) or more years, the Auditor General may transfer by deed to the Public Domain Commission these particular descriptions of land that are otherwise subject to the provisions of section one hundred twenty-seven (127) of this Act." (364) (Note: Section 127 is the preceding section.)

7.185 "All taxes charged against such lands in the office of the auditor general at the time they are deeded to the state shall be cancelled, but no part of such taxes due to the township or county shall be charged to the state, but the state, county and township respectively, shall bear the share of the loss on such taxes that properly belongs to each * * *,"— A list of such lands must be transmitted to the county treasurer and by him to the township supervisor.—"The supervisor shall omit and cancel from

his assessment roll all lands so deeded to the state as shown by said list * * *, and said lands so deeded as aforesaid shall not be liable to any assessment for any purpose until the same are again sold and deeded by the state and notice of said sale and deeding given to the county treasurer by the commissioner of the state land office, as hereinafter provided." (365)

Laws enacted in 1937, which changed provisions in relation to the enforcement of delinquent taxes are as follows:

7.112 C. S. This is part of Act 114, Mich. Public Acts, 1937, with subsequent amendments clarifying same. The pertinent provision is the addition of the following to the prescribed form of decree.

"It is further ordered, adjudged and decreed that title to each parcel of land ordered in this decree to be offered for sale and which parcel of land is bid in at such sale to the state, shall become absolute in the State of Michigan on the expiration of the period of redemption from such sale, and all taxes, special assessments, which are charged against or are liens upon such parcels and other liens and encumbrances against such parcel of whatever kind or nature shall be cancelled as of such date, unless any said parcel of land shall be redeemed as provided in Section 74 of Act 206 of Public Act of 1893, as amended, or unless an appeal shall have been taken as provided in said act." C. S. p. 56.

Following the prescribed form of the decree the section provides:

"Unless sooner redeemed, upon the expiration of such period of redemption provided for in Section 74 of this act absolute title to the lands so sold and bid in to the state shall vest in the State of Michigan as provided in said decree." (57)

The State Land Office Board Act, Act 155, Mich. Public Acts, 1937, with subsequent clarifying amendments is found in 7.951 to 7.964, pages 200 to 227, C. S. 1943. It provides for the creation of a board to be known as State Land Office Board which shall have control of all land south of a specified line crossing the state, "title to which shall be vested in the state of Michigan by virtue of any tax sale after the effective date of this act, whether occupied or unoccupied." (Sec. 3, p. 203, C. S.)

The direction as to auction sale of this land, known as "scavenger sale" contains the following pertinent provisions (Sec. 7):

> "Under rules and regulations of the board, the several parcels of land appearing upon such lists, shall be offered for sale separately, at the respective county seats, at the office of the county treasurer, or at such other convenient place as may be selected by the State Land Office Board, to the highest bidder at said sale beginning on the 2nd Tuesday of February of each year: * * * Provided that no bid shall be accepted for a smaller sum than 25% of the assessed valuation of the parcel of land as fixed and determined at the last assessment for the year preceding the vesting of title in the State of Michigan as shown in the records of the county treasurer, * * *" (page 210 C. S.) "Any owner shall have the right for a period of 30 days after the making of the highest bid, as in this section provided, to meet such highest bid, by paying the amount thereof to the representative of the Board conducting the sale in such county, or he may on application to said land office board enter into an agreement with such board for the payment of the sum required to meet such highest bid, in installments to be paid over a period of not to exceed 10 years, with interest on unpaid installments computed at the rate of six percent per annum from the date of said agreement * * * which agreement

shall provide that said vendee shall forfeit his right thereunder by failure to meet such payment or failure to meet all current taxes and assessments during the life of such agreement before such taxes and assessments become delinquent, and receive, when installments are fully paid, a quit claim deed executed as hereinafter provided." Page 212 C. S.

The effect of the quit claim deed is stated in Sec. 9 as follows:

> "The board is authorized, for and on behalf of the State of Michigan to execute, with the seal of the Board attached, such quit claim deeds, land contracts, leases or other contracts, documents or papers as may be necessary to carry out the provisions of this act. Any quit claim deed or deeds executed by the board or department shall convey title in fee to land under the provisions of this Act free from any encumbrances, including all taxes and special assessments which were cancelled by the decree pursuant to which the state obtained title, except as herein otherwise provided. It shall be the duty of the Board to notify the county treasurer of the county wherein the same are located of any conveyances or contracts which would enable such land to be returned to the tax rolls for assessment of the interest conveyed thereby and the county treasurer shall immediately report the same to the proper assessing officers • • •" (p. 225 C. S.)

Disposition of receipts obtained by the State Land Office Board is treated in Sec. 10, as follows:

> "All moneys received by the State Land Office Board • • • shall be credited to the general fund of the state, and after first deducting such commissions and maintenance costs as are authorized in Sections 4 and 8 of this Act, shall be paid to the several county treasurers who shall remit the same to the several tax assessing units • • • in propor-

tion to the delinquent taxes and special assessments of such units cancelled against any description of land sold under the provisions of this Act, by the board, any county treasurer or the department of conservation * * *. It shall be the duty of any county treasurers to prepare a certificate of all cancelled taxes upon any such description of land upon request by the state land office board. The department of conservation, or the auditor general, which certificate shall be on a form approved by the auditor general and shall be the basis for distributing of moneys between the several taxing units. Such cancelled taxes and special assessments shall be deemed to include all taxes and assessments assessed or levied against said land prior to the vesting of title in the State of Michigan." (p. 226 C. S.)